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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1157

LUCY PASSERO and RUDOLPH PASSERO,
Petitioners

v.

ZONING COMMISSION OF THE TOWN OF NORWALK,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Connecticut entered in the above-entitled case on November 28, 1967.

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CITATIONS TO OPINIONS BELOW

The memorandum of decision of the Court of Common Pleas of the State of Connecticut (R. 6-8.) is unreported and is printed in Appendix B hereto, *infra,* pp. 13-15. The opinion of the Supreme Court of the State of Connecticut, printed in Appendix B hereto, *infra,* pp. 17-19, is reported in 29 Conn. Law Journal, No. 22 (November 28, 1967) p. 5.

JURISDICTION

The judgment of the Supreme Court of the State of Connecticut was dated November 9, 1967, and announced on November 28, 1967. Appendix B, *infra,* p. 20 (R. 14.) A timely[1] motion to reargue filed on December 5, 1967 (R. 15.) was denied on December 12, 1967. (R. 18.)[2] The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), since the petitioners have been deprived of their property without Due Process of Law, contrary to the rights guaranteed them by the Fourteenth Amendment of the United States Constitution.

QUESTION PRESENTED

Whether resident property owners beneficially affected by a section of a local zoning ordinance were deprived of their property without Due Process of Law as guaranteed by the Fourteenth Amendment to the United States Constitution by the repeal of said section where the only notice of the proposed repeal of said section was given by publication in a newspaper, which notice read as follows: "Section 15, Paragraph 3, to be deleted in its entirety", and such publication completely failed to describe the nature and operative effect of such section.

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1. Such motion was filed pursuant to Section 703 of the Connecticut Practice Book (1963) which provides "A motion for reargument will not be entertained unless filed in writing within ten (10) days from the date when the decision was announced. . . ."

2. The operative effect of such motion was to stay the proceedings, as is provided for by Section 704 of the Connecticut Practice Book (1963). That Section provides "Unless the chief justice shall otherwise direct, all proceedings to enforce or carry out the judgment shall, upon the filing of a notice, be stayed until the time for filing the motion has expired, and, if the motion is filed, until its disposition. . . ."

CONSTITUTIONAL PROVISION INVOLVED

The applicable Constitutional provision is that portion of the Fourteenth Amendment to the Constitution of the United States which reads:

> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .".

STATEMENT

Introductory Matter

The authority of zoning commissions in the State of Connecticut to enact binding zoning regulations is derived from Section 8-2 of the Connecticut General Statutes, which, for the convenience of the Court, is printed in Appendix A, *infra*, pp. 8-9. The procedures to be followed by such commissions are dictated by Section 8-3 of the Connecticut General Statutes, printed in Appendix A, *infra*, pp. 9-10. The method of testing any impropriety in the commission's doings is by appeal to the Court of Common Pleas. Section 8-9 and 8-8 of the Connecticut General Statutes, Appendix A, *infra*, pp. 10-12. Only persons aggrieved by the action of the commission may maintain such appeals. Section 8-8 of the Connecticut General Statutes, Appendix A, *infra*, p. 10.

Facts

The petitioners are the owners of certain tracts of land in Norwalk, which tracts are divided by a zone boundary line into a "B" residence zone and into a light industrial zone, Appendix B, *infra*, p. 13. (R. 6-7.) Prior to September 14, 1966, the Norwalk zoning regulations contained, in Section 15, Paragraph 3, a provision which generally permitted any tract of land divided by a zone boundary line to be used in accordance with the regulations of the less restrictive zone. Appendix B, *infra*, p. 13 (R. 7.)

On July 16, 1966, and again on July 25, 1966, the respondent caused to be published in the Norwalk Hour a notice of a public hearing to be held on July 28, 1966, concerning certain proposed amendments to the Norwalk zoning regulations. (R. 5-6.) That notice read as follows: "Section 15, Paragraph 3,

to be deleted in its entirety." Appendix C, *infra,* p. 23. (R. 4.) On September 14, 1966, the respondent voted to repeal Paragraph 3 of Section 15 of the zoning regulations. Appendix C, *infra,* p. 25. (R. 5-6.)

Upon the hearing of this cause at the trial level, the respondent stipulated, and the trial court found, that the petitioners were aggrieved persons. (R. 8.) The phrase "aggrieved persons" is a term of art under Connecticut decisional law.

> "To be an aggrieved person entitled to take an appeal in a zoning case . . . . one has to be found to be specially and injuriously affected in his property or other legal rights." *Hickey v New London,* 153 Conn. 35, 37, 213 A. 2d 308 (1965).

Hence respondent conceded, by its stipulation, that the value of the petitioners land was adversely affected by the repeal of the section in question, an inescapable conclusion in light of the fact that it is now subject to more restrictive regulations.[3]

HOW FEDERAL QUESTION IS PRESENTED

On September 28, 1966, the petitioners appealed from the action of the respondent to the Court of Common Pleas, alleging in their appeal that "they were not properly notified of the Commission's intention to repeal the applicable portions of said Section 15; in that said repeal amounts to a taking of the plaintiffs' property so as to be confiscatory and in violation of the Constitutions of both the United States of America and the State of Connecticut; in that said repeal so depreciates the plaintiffs' property as to amount to a taking of said property without due compensation as required by the Constitutions of the United States of America and of the State of Connecticut." Appendix C, *infra,* p. 21. (R. 1-2.)

The trial court held that the notice published by the respondent was inadequate, that some indication of the content of

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3. In a zoning appeal the trial court is not permitted to hear the matter de novo. Section 8-8, Conn. Gen. Stat. (1958 Rev.), Appendix A, infra, p. 11. By reason of the respondent's stipulation, no evidence was heard by the trial court since the only issue before it was the adequacy of notice. Appendix B, infra, p. 13. (R.7.)

Section 15, Paragraph 3, was necessary, and rendered judgment sustaining the appeal. Appendix B, *infra,* p. 16. (R. 8-9.)

On March 3, 1967, the respondent filed an appeal to the Supreme Court of the State of Connecticut from the judgment of the Court of Common Pleas. Appendix C, *infra,* p. 25. (R. 9-10.) It assigned as error the trial court's conclusion that the notice given of the public hearing was inadequate (R. 10.) The Supreme Court of the State of Connecticut held "that the published notice was sufficient fairly to apprise the plaintiffs of the nature and character of the proposed action . . . ." and on November 28, 1967 set aside the judgment of the trial court, and remanded the case with direction to dismiss the appeal. Appendix B, *infra,* p. 19. (R. 13.) The Supreme Court of the State of Connecticut based its decision upon Section 8-3 of the Connecticut General Statutes and its decision did not mention the requirements of the Constitution of the United States. Appendix B, *infra,* pp. 17-19. (R. 12-13.) In order to bring this deficiency to the attention of the court below, the petitioners, on December 5, 1967, filed a Motion for Permission to Reargue,[4] and claimed, *inter alia,* that:

"The decision announced by the court places the burden on these appellees and the public in general to examine the zoning regulations whenever an amendment to them is proposed, since the notice here in question in no way described the effect of the section to be repealed but only gave its section and paragraph numbers. Such a burden is improper and in violation of the Due Process provisions of both the Constitutions of the United States of America and of the State of Connecticut." Appendix C, *infra,* p. 27. (R. 15-16.)

Thereafter, on December 12, 1967, the Supreme Court of the State of Connecticut denied the petitioners' motion. Appendix B, *infra,* p. 20. (R. 18.)

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4. In Grannis v Ordean, 23 U. S. 385, 392, this Court held that where a federal right was not infringed upon in the trial court, where it is the Supreme Court of the State whose decision first runs counter to the federal right, and where such infringement is suggested to the court by petition to reargue, then, in such case, the federal question is timely raised.

REASONS FOR GRANTING THE WRIT

The decision of the court below in the instant case deprives the petitioners of their property without Due Process of Law. It is believed to be erroneous and in conflict with applicable decisions of this Court. The court below gave no consideration in its opinion to the dictates of the Fourteenth Amendment to the United States Constitution, although the petitioners raised questions thereunder in its appeal to the Court of Common Pleas and again in its Motion for Permission to Reargue.

This Court has, in a series of decisions culminating in *Schroeder v New York*, 371 U. S. 209, made it very clear that:

> "'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v Meyer*, 311 U. S. 457, *Grannis v. Ordean*, 234 U. S. 385; *Priest v Las Vegas*, 232 U. S. 604; *Roller v Holly*, 176 U. S. 398.' *Mullane v Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314, 94 L ed 865, 873, 70 S. Ct. 652." *Schroeder v New York* 371 U. S. at 211.

In *Mullane*, 339 U. S. at 314, this Court said that "the notice must be of such nature as reasonably to convey the required information, *Grannis v Ordean, supra* (234 U. S. 385, 393) . . .".

This basic principle had, in the past, been adhered to by the Connecticut Courts,[5] the respondent complied with it in giving notice of other proposed changes,[6] and the Court below gave recognition to it in its opinion, saying:

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5. See **Smith v F. W. Woolworth Co.**, 142 Conn. 88, 94: "'It necessarily follows that changes . . . should not be permitted except after such full and adequate notice as will enable parties having an interest to know what is projected . . .'"

6. In the Memorandum of Decision of the trial court, Appendix B, **infra**, p. 15 (R. 8), the court stated: "An examination of the published notice reveals that the premises referred to in Amendments and Changes One to Three are amply described . . . so it is apparent that the Board was aware of the necessity of giving more complete notice than that pertaining to Amendment and Change B."

> "The purpose of the notice required by this statute is fairly and sufficiently to apprise those who may be affected by the proposed action of the nature and character of the proposed action . . .". Appendix B, *infra*, p. 18 (R. 12.)

Notwithstanding its use of this language, however, the court below specifically denied the petitioners' claim that a notice, in order to be adequate, must identify the subject matter in question. Appendix B, *infra*, p. 19. (R. 13.)

The language of this Court in the *Schroeder* case leaves no question but that the Due Process Clause dictates that interested parties be apprised fully of the pendency of the action. It is inconceivable that any notice which did not identify the subject matter in question could meet this Constitutional test.

Certainly where such "notice" is given by publication it could hardly measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires.[7] Here it is apparent that even if the published notice had been personally served upon the petitioners, or sent to them by mail, they would not have been given any actual knowledge of the intended action of the respondent. In the case of *Roller v Holly*, 176 U. S. 398, 409, this Court said: "It is manifest that the requirements of notice would be of no value whatever unless such notice was reasonable and adequate for the purpose."

It is clear that the notice which was given in the instant case could not possibly serve to apprise the petitioners of the specific action contemplated. Can it be said that such notice was reasonable and adequate when it failed to even identify the subject matter in question? It is submitted that notice con-

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7. In the **Schroeder** case, 371 U. S. at 212, this Court has expressed its general disapproval of the practice of giving notice by publication, quoting with approval the language of **Mullane**:

> "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper . . . The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. 339 U. S., at 315, 94 L ed at 874, 70 S. Ct. 652."

taining merely section numbers or paragraph numbers, without any further identification, is not of such a nature as to reasonably convey the information required by the Due Process Clause and that the petitioners have therefore been deprived of their property without Due Process of Law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

MAX R. LEPOFSKY
Counsel for Petitioners

APPENDIX A

STATUTES AND ORDINANCES

Section 8-2. Regulations

"The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, and the height, size and location of advertising signs and bill-boards. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or use of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land, to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land

throughout such municipality. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations."

Section 8-3. Enforcement of regulations; public hearings, changes

"Such zoning commission shall provide for the manner in which such regulations and the boundaries of zoning districts shall be respectively enforced and established and amended or changed. No such regulation or boundary shall become effective or be established until after a public hearing in relation thereto, held by a majority of the members of the zoning commission or a committee thereof appointed for that purpose consisting of at least five members, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be published in the form of a legal advertisement appearing in a newspaper having a substantial circulation in such municipality at least twice at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days, before such hearing, and a copy of such proposed regulation or boundary shall be filed in the office of the town, city or borough clerk, as the case may be, in such municipality, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, for public inspection at least ten days before such hearing, and may be published in full in such paper. Such regulations and boundaries may, from time to time, be amended, changed or repealed by such zoning commission by a majority vote of the commission, except as otherwise provided in this chapter. If a protest is filed at such hearing with the zoning commission against such change, signed by the owners of twenty per cent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the zoning commission. The provisions of

this section relative to public hearings and official notice shall apply to all changes or amendments. Zoning regulations or boundaries or changes therein shall become effective at such time as is fixed by the zoning commission, provided a copy of such regulation, boundary or change shall be filed in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the office of both the district clerk and the town clerk of the town in which such district is located, and notice of the decision of the commission shall have been published in a newspaper having a substantial circulation in the municipality before such effective date. Whenever a zoning commission makes any change in a zoning regulation or the boundaries of a zoning district it shall state upon its records the reason why such change is made. All petitions submitted in writing and in a form prescribed by the zoning commission, requesting a change in the regulations or the boundaries of zoning districts, shall be considered at a public hearing, in the manner provided for establishment of zoning regulations and boundaries, within ninety days after receipt of such petition. The commission shall adopt or deny the changes requested in such petition within sixty days after the hearing. The petitioner may consent to extension of the periods provided for hearing and for adoption or denial or may withdraw such petition. The zoning commission may require a filing fee to be deposited with the commission to defray the cost of publication of the notice required for a hearing. No zoning commission shall be required to hear any petition or petitions relating to the same changes, or substantially the same changes, more than once in a period of twelve months."

Section 8-8. Appeals from board to court

"Any person or persons severally or jointly aggrieved by any decision of said board, or any officer, department, board or bureau of any municipality, charged with the enforcement of any order, requirement or decision of said board, may, within fifteen days from the date when notice of such decision was published in a newspaper pursuant to the provisions of section 8-3 or 8-7, as the case may be, take an appeal to the court of common pleas of the county in which such municipality is located, which appeal shall be made returnable to said court in the same manner as that prescribed for civil actions brought to said court. Notice of such

appeal shall be given by leaving a true and attested copy thereof with, or at the usual place of abode of, the chairman or clerk of said board. The appeal shall state the reasons upon which it has been predicated and shall not stay proceedings upon the decision appealed from, but the court to which such appeal is returnable, may on application, on notice to the board and on cause shown, grant a restraining order. The authority issuing a citation in such appeal shall take from the appellant, unless such appellant is an official of the municipality, a bond or recognizance to said board, with surety, to prosecute such appeal to effect and comply with the orders and decrees of the court. Said board shall be required to return either the original papers acted upon by it and constituting the record of the case appealed from, or certified copies thereof. The court, upon such appeal, shall review the proceedings of said board and shall allow any party to such appeal to introduce evidence in addition to the contents of the record of the case returned by said board if the record does not contain a complete transcript of the entire proceedings before said board, including all evidence presented to it, pursuant to section 8-7a, or if, upon the hearing upon such appeal, it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court may take such evidence or appoint a referee or committee to take such evidence as it directs and report the same to the court, with his or its findings of facts and conclusions of law, which report shall constitute a part of the proceedings upon which the determination of the court shall be made. The court, upon such appeal and after a hearing thereon, may reverse or affirm, wholly or partly, or may modify or revise the decision appealed from. Costs shall not be allowed against said board unless it appears to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. Appeals from decisions of said board shall be privileged cases to be heard by the court, unless cause is shown to the contrary, as soon after the return day as is practicable."

Section 8-9. Appeals from zoning commissions and planning and zoning commissions

"Appeals from zoning commissions and planning and zoning

commissions may be taken to the court of common pleas in the manner provided in section 8-8."

Section 15, Paragraph 3, Norwalk Zoning Regulations

"A lot situated in the interior of a block and divided by the zone boundary line into two different zones may insofar as it is situated at least 100 feet from any street bounding the block in which it is located, be used in accordance with the use regulations of the less restricted zone into which the lot is divided."

APPENDIX B

OPINION OF THE COURT OF COMMON PLEAS OF THE STATE OF CONNECTICUT

Memorandum of Decision

"Plaintiffs are the owners of land in Norwalk divided by a zone boundary line, one side of which is a "B" residence zone and the other a light industrial zone. Prior to September, 1966, the Zoning Regulations of Norwalk, Section 15, Paragraph 3, permitted any tract of land divided by a zone boundary to be used in accordance with the regulations of the less restrictive zone. On July 28, 1966, the Zoning Commission held a public hearing to consider repealing Section 15, Paragraph 3, and after the hearing did so. The plaintiffs who have appealed from the Board's decision are aggrieved by this decision and the parties have so stipulated.

The only issue in this appeal is whether the notice given by the defendant Board was legally adequate.

The notice of Public Hearing (Exhibit A) published in a local paper contained a first paragraph which warned of a public hearing on July 28, 1966, "on the question of whether or not it (the Board) should adopt any or all of the following amendments to and changes of the Building Zone Regulations and zone boundaries of the City of Norwalk." Following this paragraph were 4 numbered proposed amendments, the fourth containing 4 sub-amendments including "Amendment and Change — B — Section 15, Paragraph 3, to be deleted in its entirety" to which plaintiffs object. Plaintiffs did not attend the foregoing meeting.

Section 8-3 General Statutes of Connecticut, Rev. 1958, requires publication of the time and place of the hearing of

zoning changes, but does not provide any standard of adequacy. To be adequate, the notice is required to fairly and sufficiently apprise those who may be affected of the nature and character of the action proposed to make possible intelligent preparation for participation in the hearing. Neuger v. Zoning Board, 145 Conn. 625, 630. Notice of a hearing is not required to contain an accurate forecast of the precise action which will be taken upon the subject matter referred to in the notice. The notice in the instant case was not misleading or incorrect as was the case in Smith v.Woolworth, 142 Conn. 88 or in Hutchison v. Board of Zoning Appeals, 138 Conn. 247, cited by plaintiffs.

It appears to be the contention of plaintiffs that the entire paragraph proposed to be deleted should have been printed in the notice. In the case of Lavitt v. Pierre, 152 Conn. 66, 73, the Supreme Court held that publication of a description of the entire area of a map was not necessary for proper notice, saying:

> The zones to be affected by the proposed action specifically appeared on the map which was readily available for inspection and to require the Zoning Commission, in addition, to describe the zones in the published notice would impose a wholly unnecessary requirement.

In that case however, there was sufficient description to alert one reading the notice of the proposed action of the Board. In the instant case, it is true that Zoning Regulations were undoubtedly available for inspection, but from the notice given how would any owner of property divided by a zoning line be alerted to the fact that the proposed amendment affected him? If such notice is proper, then it would be incumbent upon every property owner to keep a copy of the Zoning Regulations handy to check them every time a notice of zoning change appeared in the newspaper. This is clearly not the intent of the statute and cases regarding notice. It is not for the court to decide whether the entire paragraph to be deleted should have been included in

the notice but at least some indication of what Section 15, Paragraph 3, referred to was necessary. An examination of the published notice reveals that the premises referred to in Amendments and Changes One to Three are amply described and that Amendment C refers to Planned Residential Development, Amendment D refers to a Boat Marina and E to Off Street Parking Regulations, so it is apparent that the Board was aware of the necessity of giving more complete notice than that pertaining to Amendment and Change B.

Accordingly the appeal is sustained.

Tierney.

Judge.

Filed Feb. 21, 1967.

JUDGMENT OF THE COURT OF COMMON PLEAS OF THE STATE OF CONNECTICUT

No. 7067 RUDOLPH PASSERO and LUCY PASSERO OF NORWALK, CONN, *vs.* ZONING COMMISSION OF THE TOWN OF NORWALK	COURT OF COMMON PLEAS, at Stamford FAIRFIELD COUNTY FEBRUARY 21, 1967

Present: Hon. William L. Tierney, Jr., Judge

JUDGMENT

This action in the nature of an appeal from the Zoning Commission of the Town of Norwalk, wherein said Commission repealed Section 15, Paragraph 3 of the Zoning Regulations of said Town of Norwalk came to this Court on the first Tuesday of November, 1966 and thence to the present time when the parties appeared and were at issue, as on file.

The court find the plaintiffs to be aggrieved parties for the purpose of taking this appeal.

The court having heard the parties, finds the issues for the plaintiffs.

Whereupon it is adjudged that the appeal be and it is sustained.

By the Court,

John J. P. Ryan,

Asst. Clerk."

OPINION OF THE SUPREME COURT OF THE STATE OF CONNECTICUT

"SUPREME COURT

October Term, 1967

RUDOLPH PASSERO et al.

vs.

ZONING COMMISSION OF THE TOWN OF NORWALK

Appeal from the action of the defendant in repealing a zoning regulation, brought to the Court of Common Pleas in Fairfield County at Stamford and tried to the court, Tierney, J.: judgment sustaining the appeal, from which the defendant appealed to this court. Error: judgment directed.

Edward J. Zamm, special counsel, with whom, on the brief, was Thomas A. Flaherty, corporation counsel, for the appellant (defendant).

Jules Lang, with whom, on the brief, was Max R. Lepofsky, for the appellees (plaintiffs).

Covello, J. The plaintiffs are the owners of certain tracts of land in Norwalk which lie partly in a light industrial zone and partly in a B residence zone. Prior to September 14, 1966, Section 15 of the Norwalk zoning regulations contained, in paragraph 3, a provision of general application throughout Norwalk pertaining to the use of certain lots which are divided by a zone boundary line.[1] On July 16, 1966, and again on July 25, 1966, the defendant, the zoning commission of Norwalk, hereinafter referred to as the commission, caused to be published in The Norwalk Hour a legal notice of a public hearing to be held on July 28, 1966, concerning certain proposed amendments to the Norwalk zoning regulations. After the public hearing,

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1. Norwalk Zoning Regs. Section 15, Paragraph 3 (1929, as amended.) "A lot situated in the interior of a block and divided by the zone boundary line into two different zones may in so far as it is situated at least one hundred feet from any street bounding the block in which it is located, be used in accordance with the use regulations of the less restricted zone into which the lot is divided."

the commission voted, on September 14, 1966, to repeal paragraph 3 of Section 15 of the zoning regulations. From this action, the plaintiffs appealed to the Court of Common Pleas, which found the plaintiffs to be aggrieved and sustained the appeal. The commission appealed to this court.

The sole issue in this appeal is whether the notice of the hearing of July 28, 1966, published in The Norwalk Hour, so far as it concerned the proposed deletion of paragraph 3 of Section 15 from the zoning regulations, was adequate to meet the requirements of Section 8-3 of the General Statutes concerning notice of the hearing. Section 8-3 provides: The "zoning commission shall provide for the manner in which regulations . . . shall be . . . established and amended or changed. No such regulation or boundary shall become effective or be established until after a public hearing in relation thereto . . . at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be published in the form of a legal advertisement appearing in a newspaper . . . before such hearing, and a copy of such proposed regulation or boundary shall be filed in the office of the town, city or borough clerk, as the case may be, in such municipality . . . for public inspection at least ten days before such hearing, and may be published in full in such paper . . . The provisions of this section relative to public hearings and official notice shall apply to all changes or amendments . . ." The purpose of the notice required by this statute is fairly and sufficiently to apprise those who may be affected by the proposed action of the nature and character of the propsed action so as to enable them to prepare intelligently for the hearing. *Edward Balf Co. v. East Granby,* 152 Conn. 319, 325, 207 A. 2d 58; see also *Neuger v. Zoning Board,* 145 Conn. 625, 630, 145 A. 2d 738. Thus, in *Edward Balf Co. v. East Granby, supra,* a notice which stated that a hearing was to be held to consider "the re-adoption of the zoning and sub-division regulations" which affected the legally protected interests of every property owner in the town of East Granby was held to be sufficient notice to comply with the requirements of the statute, in view of the fact that, before the readoption of the zoning regulations, a copy of those regulations was filed with the town clerk as required by statute. *Id.,* 326.

In the present case, the commission caused to be published in a local newspaper a notice of a public hearing. The notice clearly stated that the hearing was called to consider whether the commission should adopt any or all of the amendments to and changes of the building zone regulations and zone boundaries set forth in the notice. The notice specified the changes which were proposed, among which was "Section 15, Paragraph 3, to be deleted in its entirety." The notice further provided that "(a) copy of this notice and copies of the hereinbefore mentioned maps, petitions and changes, have been filed in the Office of the City Clerk and may be examined by anyone having an interest therein." No claim has been made that such copies were not in fact filed. See *Scovil v. Planning & Zoning Commission,* 155 Conn. 12, 14, 230 A. 2d 31. The plaintiffs claim, in effect, that the notice should have identified the subject matter of the provisions of paragraph 3 of Section 15 of the regulations. The statute (Section 8-3) permits, but does not require, the regulations themselves be set forth in the notice. The statute does not require that the hearing notice contain a summary of the contents of the proposed amendment to the regulations. See cases collected in note. 96 A.L.R. 2d 449, 502. It does, however, require that a copy of the proposed regulation or boundary be filed in the office of the town, city or borough clerk at least ten days before the hearing, so as to permit anyone affected by the proposal to obtain detailed information concerning the proposed amendments. We hold that the published notice was sufficient fairly to apprise the plaintiffs of the nature and character of the proposed action, which included the repeal of the third paragraph of Section 15 of the regulations.

There is error, the judgment is set aside and the case is remanded with direction to dismiss the appeal.

In this opinion the other judges concurred.

The foregoing is a true copy of the original opinion as filed with the reporter of judicial decisions; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

s/ Louis Weinstein
Reporter"

JUDGMENT OF THE SUPREME COURT OF THE STATE OF CONNECTICUT

"STATE OF CONNECTICUT

At a Supreme Court, holden at Hartford on the first Tuesday of October, 1967

RUDOLPH PASSERO, et al *vs.* ZONING COMMISSION OF THE TOWN OF NORWALK	ON APPEAL from the COURT OF COMMON PLEAS at Stamford No. 6200

This appeal by the Defendant, claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Court of Common Pleas for Fairfield County at Stamford on the third day of March, 1967 and came to this Court at its session at Hartford, on the first Tuesday of April, 1967; and thence by continuance to the present term when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Common Pleas Court there is error.

It is therefore considered and adjudged that there is error, the judgment is set aside and the case is remanded with direction to dismiss the appeal.

By the Court,
s/ J. Leo Campana
Clerk

Date of Judgment: November 9, 1967
Decision announced: November 28, 1967

DENIAL OF MOTION TO REARGUE

December 12, 1967

The motion by the plaintiffs to reargue is denied by the court;

Alcorn,
Acting Chief Justice.

APPENDIX C

PLEADINGS BELOW
PETITIONERS' APPEAL TO
THE COURT OF COMMON PLEAS

To the Court of Common Pleas, to be held at Stamford in and for the County of Fairfield, on the First Tuesday of November, 1966, come Rudolph Passero and Lucy Passero, of the Town of Norwalk, County of Fairfield and State of Connecticut, appealing from a decision of the Zoning Commission of the Town of Norwalk, in said County, and complain and say:

1. On September 14, 1966, and for considerable time prior thereto, the plaintiffs were the owners of certain tracts of land located in the Town of Norwalk on the north side of the Boston Post Road, so-called, which tracts of land lie partially in light industrial zone and partially in B residence zone.

2. Prior to said September 14, 1966, the zoning regulations of the Town of Norwalk contained Section 15, Paragraph 3 which provided that any tract of land divided by a zone boundary line could be used in accordance with the use regulations of the less restrictive zone.

3. On July 28, 1966, the Zoning Commission of the Town of Norwalk held a public hearing with regard to the repeal of said third paragraph of Section 15, as aforesaid.

4. At an executive meeting on September 14, 1966, said defendant Commission repealed the third paragraph of Section 15.

5. In repealing said third paragraph of Section 15, the defendant Commission acted illegally, arbitrarily, and in abuse of the discretion vested in it in that the plaintiffs and other property owners of the Town of Norwalk whose property was divided by a zone boundary line had a vested right in the maintenance of said Section 15, and they were not properly notified of the Commissions' intention to repeal the applicable portions of said Section 15; in that said repeal amounts to a taking of the plaintiffs' property so as to be confiscatory and in violation of the Constitutions of both the United States of

America and the State of Connecticut; in that said repeal so depreciates the plaintiffs' property as to amount to a taking of said property without due compensation as required by the Constitutions of the United States of America and of the State of Connecticut.

Dated at Norwalk, Connecticut, this 23rd day of September, A.D., 1966.

The Plaintiffs,
Rudolph Passero and Lucy Passero,
By Lepofsky and Lepofsky,
Their Attorneys.

Filed Sept. 28, 1966."

"ANSWER AND RETURN OF DEFENDANT ZONING COMMISSION OF CITY OF NORWALK

1. The defendant, Zoning Commission of the City of Norwalk, admits Paragraphs 1, 3 and 4 of plaintiffs' Complaint.

2. The defendant, Zoning Commission of the City of Norwalk, denies Paragraphs 2 and 5 of plaintiffs' Complaint.

3. Returned herewith, made a part hereof, and incorporated herein, are copies of the papers constituting the record of the case appealed from, consisting of the following:

Exhibit "A" — Notice of Public Hearing and proof of same.

Exhibit "B" — Copy of Norwalk Zoning Ordinance and Map.

Exhibit "C" — Minutes of Public Hearing of July 28, 1966.

Exhibit "D" — Minutes of Executive Session of September 14, 1966.

Exhibit "E" — Notice of Zone Change adoption.

4. The documents described in Paragraph 3 above constitute the full record upon which the Norwalk Zoning Commission acted.

The Defendant, Zoning Commission
of the City of Norwalk,
By Edward J. Zamm,
Its Attorney.

Filed Oct. 26, 1966.

ZONING COMMISSION
NOTICE OF PUBLIC HEARING

Notice is hereby given that the ZONING COMMISSION for the CITY OF NORWALK, CONNECTICUT, will hold a Public Hearing on Thursday, July 28, 1966 at 3:00 P.M. (DST) in the Circuit Court Chambers, at the Police-Court Building, Veterans Memorial Park, West Avenue, Norwalk, Connecticut, on the question of whether or not it should adopt any or all of the following Amendments to and Changes of the Building Zone Regulations and Zone Boundaries of the City of Norwalk.

* * * * *

AMENDMENT AND CHANGE B

Section 15, Paragraph 3, to be deleted in its entirety.

A copy of this notice and copies of the hereinbefore mentioned maps, petitions and changes, have been filed in the Office of the City Clerk and may be examined by anyone having an interest therein.

This hearing is being held in conformance with the provisions of Section 8-3 of the Connecticut General Statutes, as amended. Dated at Norwalk, Connecticut, this 16th day of July, 1966.

Zoning Commission
City of Norwalk
F. Richard Gregory, Chairman
By: William R. Guarnieri
Zoning Officers

Published in the Norwalk Hour
Two Insertions:

July 16, 1966
July 25, 1966

NORWALK ZONING COMMISSION SEPT. 14, 1966

EXECUTIVE SESSION

The Zoning Commission for the City of Norwalk, Connecticut held at Executive Session on September 14, 1966 at the offices of the Zoning Enforcement Officer, City Hall, South Norwalk, Connecticut. The meeting was called to order at 8:15 P.M. The following members were present:

Mr. Thomas Lyons
Mr. Lawrence Bottone
Mr. Thomas Mooney
Mr. F. Richard Gregory — Chairman

Mr. Leo Rumely was absent, being out of the country on business.

Mr. William R. Guarnieri, Zoning Enforcement Officer, was present.

Mayor Frank Zullo was a guest.

The minutes of the Executive Session held on June 15, 1966 were read. Upon motion duly made, seconded and unanimously approved these minutes were accepted.

After a lengthy discussion regarding application of the Norwalk Zoning Commission for PROPOSED CHANGES AND AMENDMENTS TO THE BUILDING & ZONE REGULATIONS, the following action was taken:

Upon motion duly made, seconded and unanimously approved, AMENDMENT & CHANGE #4 on the Agenda of the Public Hearing dated July 28, 1966 — PROPOSED CHANGES AND AMENDMENTS TO THE BUILDING & ZONE REGULATIONS be granted, as follows:

AMENDMENT & CHANGE #4 — A — Section 17, Paragraph A, is hereby amended and changed to include, after the word regulations, "within fifteen (15) days of the issuance of a permit".

AMENDMENT & CHANGE #4 — B — Section 15, Paragraph 3, to be deleted in its entirety.

AMENDMENT

4. At an executive meeting on September 14, 1966, said defendant Commission repealed the third paragraph of Section 15, and the plaintiffs are aggrieved thereby.

The Plaintiffs,
By Lepofsky and Lepofsky,
Their Attorneys.

Filed Jan. 25, 1967."

RESPONDENTS' APPEAL TO THE SUPREME COURT OF THE STATE OF CONNECTICUT AND ASSIGNMENT OF ERRORS

"DEFENDANT'S APPEAL

In the above entitled action, the defendant Norwalk Zoning

Commission, appeals to the Supreme Court of the State of Connecticut from the Judgment rendered thereon.

The Defendant,
Zoning Commission of the
Town of Norwalk,
By Edward J. Zamm,
Its Attorney.

I certify that the defendant in the above entitled action has deposited with me the sum of One Hundred Fifty ($150.00) Dollars as security that it will prosecute this appeal to effect and pay and costs for which Judgment may be rendered against it herein, that the foregoing appeal was filed on March 3, 1967, and that the defendant has paid the entry and record fees.

John J. P. Ryan,
Asst. Clerk of the Court of Common Pleas
for Fairfield County at Stamford.

ASSIGNMENT OF ERRORS

The Court, in its Memorandum of Decision dated February 21, 1967, erred:

1. In concluding that the notice of Public Hearing, as it pertained to Norwalk Zoning Ordinance Section 15, Paragraph 3, was inadequate according to law.

The Defendant,
Zoning Commission of the
Town of Norwalk,
By Edward J. Zamm,
Its Attorney.

Filed Mar. 3, 1967.
Noted.
Tierney, J."
March 7, 1967

PETITIONERS' MOTION FOR PERMISSION TO REARGUE

"No. 6200
Rudolph Passero, et ux
vs
Zoning Commission of
the Town of Norwalk

Supreme Court
of
Connecticut
December 1, 1967

Motion for Permission to Reargue

The Plaintiffs — Appellees in the above entitled appeal, pursuant to Sec. 703 of the Connecticut Practice Book, respectfully move for permission to reargue said appeal for the following reasons:

1. The decision of the court which was announced on November 28, 1967, reversed the holding of the trial court.

2. The affect of the decision is to deprive the appellees of the use of a large portion of their land.

3. The central issue of the appeal was the legal sufficiency of the notice given by the defendant commission of their intention to repeal a section of the zoning regulation of Norwalk.

4. Said notice merely stated: "Section 15, Paragraph 3, to be deleted in its entirety."

5. The decision announced by the Court places the burden on these appellees and the public in general to examine the zoning regulations whenever an amendment to them is proposed, since the notice here in question in no way described the effect of the section to be repealed but only gave its section and paragraph numbers.

6. Such a burden is improper and in violation of the due process provisions of both the Constitutions of the United States of America and of the State of Connecticut.

7. The court's decision in effect amounts to a partial taking of the appellee's property without proper legal protection or process.

8. Said decision is improper in that it presupposes that the notice published by the Defendant Commission was adequate to apprise the appellees and the public in general that their property rights might be affected by the proposed amendment, and that they could thereafter have examined the regulations or proposed amendment at the City Clerk's Office.

9. Said decision creates confusion as to what the law of this state is on the issue of the adequacy of notice in zoning cases as until now the notice had to be sufficient to apprise interested parties as to what action was intended whereas now all that is required is notice be given that a change is intended without any description of that proposed change.

10. The court's reliance on the case of *Balf Co. v. East Granby,* 152 Conn. 319, is ill founded since that case dealt merely with the readoption of the entire zoning regulations of East Granby. The regulations were already in existence and presumably proper notice was given prior to their original adoption and their readoption would not alter anyone's property rights, whereas the amendment here in question would substantially alter the property rights of these appellees, and they were therefore entitled to adequate notice of the proposed change.

11. Up until the rendition of this decision the law of this state as enunciated in the cases of *Neuger v Zoning Board,* 145 Conn. 625; and *Winslow v. Zoning Board,* 143 Conn. 381, was that before a zoning ordinance could be altered a zoning commission was required to give legal notice sufficient on its face to apprise the public at large as to what changes were intended. That rule has now been changed to require the zoning commission to only give legal notice that a change is intended and then

leave it up to the public to determine what the change is and whether it affects their property rights.

12. The decision in this case, without specific reference to them, in effect overrules both the *Neuger* and *Winslow* cases.

Wherefore the appellees respectfully pray for any order authorizing reargument of this appeal.

THE PLAINTIFFS — APPELLEES
By s/ Jules Lang
LEPOFSKY AND LEPOFSKY
Their Attorneys

ORDER

The above entitled motion having been heard, is hereby granted/denied.

THE COURT

By .....
Clerk

This is to certify that a copy of the foregoing motion has this day been mailed to all counsel of record.

s/ Jules Lang

.....
Jules Lang

Filed: December 5, 1967"

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

No. 1157

LUCY PASSERO AND RUDOLPH PASSERO,
Petitioners,

v.

ZONING COMMISSION OF THE TOWN OF NORWALK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

VINCENT D. FLAHERTY,
500 West Avenue,
Norwalk, Connecticut.

DANIEL E. REED, JR.,
Corporation Counsel.

ROBERT H. RUBIN,
Special Counsel,
Office of Corporation Counsel,
City Hall, North Main Street,
South Norwalk, Connecticut.

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IN THE

Supreme Court of the United States

October Term, 1967

No. 1157

LUCY PASSERO AND RUDOLPH PASSERO,
Petitioners,

v.

ZONING COMMISSION OF THE TOWN OF NORWALK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent prays that the Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut in the above entitled case be denied.

Citations to Opinions Below

The Respondent subscribes to the citations to opinions below contained in the petition.

Jurisdiction

The Respondent agrees that Petitioners have attempted to invoke the jurisdiction of this court under 28 U.S.C., Section 1257(3) but asserts that the requisites for this court taking jurisdiction and granting Certiorari are not present as will be set forth in section entitled, "REASONS WHY THIS MATTER SHOULD NOT BE REVIEWED AND WHY CERTIORARI SHOULD BE DENIED", *infra.*

Questions Presented

Whether the Supreme Court of the State of Connecticut decided this matter on an adequate state ground not in conflict with the decisions of this court so that Certiorari should be denied.

Whether the Petitioners failed to present a federal question in the Connecticut courts in a proper manner so as to enable this court to grant Certiorari.

Constitutional Provision Involved

In light of the argument set forth in section entitled, "REASONS WHY THIS MATTER SHOULD NOT BE REVIEWED AND WHY CERTIORARI SHOULD BE DENIED", *infra*, the Respondent asserts that no Constitutional provision is, in fact, involved in this matter.

Statement

The Respondent, generally, subscribes to Petitioners' Statement with the following points of clarification.

A Public Hearing was, in fact, held at which members of the public attended and spoke in regard to the zoning change in question.

Although the Respondent stipulated upon the hearing of this cause at the trial that the Petitioners were aggrieved the Respondent denies that such stipulation involved a concession on its part that the value of the Petitioners' lands was adversely affected by the repeal of the section in question.

How Federal Question is Presented

The Respondent subscribes to the Petitioners' version of how they have sought to present the Federal question in this case, but contends that they failed to present it properly at crucial stages in the proceedings so as to give this court jurisdiction to entertain their petition. The argument in this light will be set forth in section entitled, "REASONS WHY THIS MATTER SHOULD NOT BE REVIEWED AND WHY CERTIORARI SHOULD BE DENIED", *infra.*

Reasons Why this Matter Should Not be Reviewed and Why Certiorari Should be Denied

1. The decision of the Supreme Court of the State of Connecticut is not in conflict with the decision of this court.

In their reasons why this court should grant a Writ of Certiorari Petitioners rely heavily on the case of *Schroeder* v. *New York,* 371 U.S. 209 and the cases cited therein.

It is submitted that these cases are clearly distinguishable from the instant matter.

Roller v. *Holly,* 176 U.S. 398, *Milliken* v. *Meyer,* 311 U.S. 457, *Grannis* v. *Ordean,* 234 U.S. 385 and *Priest* v. *Las Vegas,* 232 U.S. 604, all concern the question of service of process and the issues in those cases are in no way comparable to those in the matter under discussion. Here the question is the form of the notice and what it contained, rather than the manner in which it was given.

The issue in the *Schroeder* case, likewise, did not concern the form of a legal notice, but centered on the scope of the notice. *Schroeder* involved the diversion of a river by the City of New York. A statute provided that legal notice be given affected property owners so that they could file a claim for damages within a specified period of time. The notice in question was posted and was published in certain newspapers, but was not published in newspapers close to the plaintiff's location and which most likely would have come to her attention.

It was held that since the plaintiff would have had the right to file a claim for damages the notice given, under the circumstances of the case, did not measure up to the quality of notice which the due process clause required.

In the instant case, publication was in the local Norwalk newspaper and the petitioners did not lose their legal remedy. In fact, they exercised their remedy in timely fashion by taking an appeal to the Court of Common Pleas albeit on the ground that they failed to receive adequate notice of the change in the Zoning Ordinance.

The holding in the *Schroeder* case can be limited to its specific facts. In fact, the court in *Schroeder,* in discussing the case of *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, upon which the petitioners also rely, indicated that the sufficiency of notice under the due process clause has to be determined on a case-by-case basis.

> "In the Mullane case which involved notice by publication to the beneficiaries of a common trust fund, the court thoroughly canvassed the problem of sufficiency of notice under the due process clause, pointing out the reasons behind the basic constitutional rule as well as the practical considerations which make it impossible to draw a standard set of specifications as to what is constitutionally adequate notice to be mechanically applied in every situation." 371 U.S. at 212.

The petitioners in their petition (Pet. Brief, p. 6, Footnote 7) quoted from the court in *Schroeder* citing with approval the language of *Mullane.*

Significantly a key sentence in the middle of that language in *Mullane,* which distinguishes both *Schroeder* and *Mullane* from this matter, has been omitted by petitioners. The full quotation with the omitted language italicized reads as follows:

> "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper *and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed.* The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. 339 U.S., at 315, 94 L ed at 874, 70 S. Ct. 652."

The issue raised in the *Mullane* case essentially was whether or not the vehicle of notice (newspaper advertisement) was sufficient. Questioned also was the validity of the New York statute setting forth the notice procedure.

The court in *Mullane* held that the statutory provision for notice by publication was not subject to due process objections insofar as it concerned beneficiaries whose interest or addresses were unknown to the trustee. The provision was subject, however, to such objections as regarded beneficiaries whose whereabouts and interests were known. It was also stated that notice by mail would have been sufficient.

The court in *Schroeder* viewed the rule in *Mullane* as follows:

> "The general rule that emerges from the Mullane case is that notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question." 371 U.S. at pp. 212, 213.

This is clearly inapplicable in the petitioners' matter since a change in zone clearly would affect property owners throughout a town whose names and addresses would not be readily available.

It is apparent, therefore, that the problems in *Schroeder* and *Mullane* concern the scope of notice in the former case and the vehicle of notice in the latter.

In the matter subject of this petition, of course, no claim has been made that either the vehicle (newspaper publication) or the scope of the notice (the Norwalk local daily paper) was improper. In addition, the petitioners have not questioned the validity of *Section 8-3* of the *Connecticut General Statutes* which sets forth the notice procedure.

The only claim has been that the form of notice was improper in that it "failed to describe the nature and operative effect of such section."

The question raised by petitioners, therefore, in light of the decisions of this court, is "was the notice in question sufficient under all of the circumstances to give the plaintiffs notice of the proposed change in the Zoning Regulations so as to fulfill the requirements of the due process clause". Respondent contends that it was sufficient both under the due process clause and under the standards set by the Connecticut General Statutes.

II. The Supreme Court of the State of Connecticut has decided this matter on an adequate state ground and, therefore, it should not be reviewed by this court.

The Supreme Court of the State of Connecticut, in essence, has ruled that the notice of which the petitioners complain was adequate to meet the requirements of *Section 8-3* of the *General Statutes of the State of Connecticut*. The petitioners agree with this and they also point out that the court did not consider the requirements of the United States Constitution (Pet. Brief, p. 4).

Since the plaintiffs have not attacked the standards, criteria or procedures set forth in *Section 8-3* of the *Gen-*

eral Statutes as being violative of due process, it is submitted that the decision of the Supreme Court of the State of Connecticut rests on an adequate state ground.

It is the general rule that the Supreme Court of the United States will not review a state court decision even though a federal question is involved if the decision rests on an adequate state ground. The Supreme Court itself, of course, determines whether the state ground relied on is adequate. *Staub* v. *City of Baxley,* 355 U.S. 313; *NAACP* v. *State of Alabama ex rel. Patterson,* 357 U.S. 449.

In addition, this court is without jurisdiction on Certiorari to review holdings of a state court which concern matters of state law and amount, at most, to alleged erroneous construction of statutes of the state by its own courts. 54 Am. Jur., U. S. Courts, Section 247; *Neblett* v. *Carpenter,* 305 U.S. 297, Re-hearing denied in 305 U.S.

Essentially, the petitioners' complaint, though clothed in language asserting deprivation of due process, really asserts that the Supreme Court of the State of Connecticut has erroneously construed Section 8-3 of the Connecticut General Statutes in concluding that the notice in question fulfilled requirements of that statute.

The Supreme Court of Connecticut relied heavily on the cases of *Edward Balf Co.* v. *East Granby,* 152 Conn. 319 and *Neuger* v. *Zoning Board,* 145 Conn. 625, in arriving at this conclusion (see Pet. Appendix B, p. 18).

The Court in *Neuger* stated that "notice of a hearing is not required to contain an accurate forecast of the precise acts which will be taken upon the subject matter referred to in the notice." 145 Conn. 625, at 630.

There is fair support for the Connecticut Supreme Court's non-federal ground of decision. Therefore, it is

not the role of this court to inquire whether the rule applied by the Connecticut court is right or wrong or to substitute its own view of what should be deemed the better rule for that of the Connecticut court. *Broad River Power Co.* v. *South Carolina,* 281 U.S. 537, affirmed on re-hearing in 28[illegible] U.S. 187.

III. The petitioners have failed to present a federal question in a proper manner.

It is essential to the jurisdiction of the Supreme Court on certiorari to the State court that it appear affirmatively from the record not only that a federal question was presented for decision in that court, but also that its decision of the federal question was necessary to the determination of the cause. The record must also show that the question was actually decided or that the judgment as rendered would not have been given without deciding it. 54 Am. Jur., U. S. Courts, Section 263; *McGoldrick* v. *Gulf Oil Corporation,* 309 U.S. 2, vacated on re-hearing in 309 U.S. 692; and *Lynch* v. *New York,* 293 U.S. 52.

Respondent contends under the above rule that this court has no jurisdiction to grant certiorari in spite of the fact that the petitioners raise questions of Constitutionality in their appeal to the Court of Common Pleas and later in their Motion to Reargue their appeal to the Supreme Court of Connecticut.

The petitioners, in their section entitled "QUESTIONS PRESENTED" state that the issue is one of deprivation of property without due process of law under the Fourteenth Amendment (Pet. Brief, p. 1).

The appeal to the Court of Common Pleas, however, attempted to raise the Constitutionality question differently in terms of a taking of property without due compensation (Pet. Appendix C, p. 22).

Respondent submits that the issue raised in Plaintiffs' Petition for Certiorari is not the same issue as they attempted to raise in the Connecticut courts. The issue raised in the petition is whether or not the standards for procedural due process were met.

In the state courts the petitioners actually claimed that they were not afforded the protection of substantive due process. See *16 Am. Jur. 2d, Constitutional Law, Sections 549 and 550.*

Although the Court of Common Pleas found the issues for the petitioners, no specific finding was made to indicate whether or not the lower court found any federal Constitutional violation. The respondent's Assignment of Errors to the Supreme Court of Connecticut was broadly couched and it did not specifically raise a federal question. As a result, a Constitutional issue was never specifically presented to the Connecticut Supreme Court until petitioners filed their Motion to Reargue. Therefore, the Connecticut Supreme Court was able to decide the question on the state ground and was never required to address itself to the federal question.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

VINCENT D. FLAHERTY,
DANIEL E. REED, JR.,
ROBERT H. RUBIN,
Counsel for Respondent.